



PATENT APPLICATION

Docket No: 13447.9.2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Daniel E. Gerbec et al.

Serial No.:

10/651,138

Filed:

August 28, 2003

Confirmation No.:

8182

For:

METHODS FOR ADJUSTABLE BONE  
FUSION IMPLANT

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)  
)  
) Art Unit  
) 3732  
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CERTIFICATE OF DEPOSIT UNDER 37 CFR § 1.8

I hereby certify that the following documents are being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, PO Box 1450, Alexandria, Virginia 22313-1450, on the 26<sup>th</sup> day of February 2004.

- Transmittal for Information Disclosure Statement (3 pages)
- Information Disclosure Statement (2 pages)
- Form PTO-1449 listing 52 references (4 pages)
- Postcard

Respectfully submitted,

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Attorney for Applicant

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For: METHODS FOR ADJUSTABLE BONE FUSION IMPLANT

## TRANSMITTAL FOR INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents  
PO Box 1450  
Alexandria, Virginia 22313-1450

Sir:

Transmitted herewith for filing and pursuant to 37 C.F.R. § 1.97 is an Information Disclosure Statement, which includes the following statements, if any, required variously by 37 C.F.R. § 1.98:

Statement of relevance of selected cited references not in the English language which are not translated.

Statement that selected cited references are substantially cumulative of an enclosed or previously submitted reference.

Statement that selected cited references were previously cited by or submitted to the United States Patent and Trademark Office in a prior application which is relied upon for an earlier filing date under 35 U.S.C. § 120.

A. Additional Materials Required Due to Content of Information Disclosure Statement

Transmitted are the following documents in addition to the Information Disclosure Statement as required variously under 37 C.F.R. § 1.98:

- ☒ Form PTO-1449 listing 52 references submitted for consideration.
- ☒ Because the application was filed after June 30, 2003, and all cited references are US Patents or US Patent applications, copies of the references are not enclosed.
- ☐ English translations of \_\_\_\_ (\_\_\_\_) of the references listed on the Form PTO-1449 which are not in the English language.
- ☐ Copies of the following documents from the prosecution of a previous, related application:
  - ☐ Form PTO-1449; and
  - ☐ Form PTO-892

B. Additional Materials Required Due to Timing of Filing of Information Disclosure Statement

The transmitted Information Disclosure Statement is being filed within one (1) of the following four (4) time periods:

- I. ☒ Prior to the later of either three (3) months following the filing date or the mailing of a first Office Action. Accordingly, no materials other than those listed above are enclosed.
- II. ☐ Following the latter of either three (3) months following the filing date or the mailing of a first Office Action, but before the mailing of a final Office Action or a Notice of Allowance. Accordingly, to secure consideration thereof, one (1) of the following is also enclosed:
  - ☐ Promptness Certification; or
  - ☐ Check No. \_\_\_\_\_ in the amount of \$180.00 constituting the submission fee set forth in 37 C.F.R. § 1.17(p).
- III. ☐ After the mailing of a Notice of Allowance, but before payment of the Issue Fee. Accordingly, in order to secure consideration thereof, each of the following are also enclosed:
  - ☐ Promptness Certificate;
  - ☐ Petition for Consideration; and

\_\_\_\_ Check No. in the amount of \$ \_\_\_\_\_ constituting the petition fee set forth in 37 C.F.R. § 1.17(i)(1).

IV. \_\_\_\_ After payment of the Issue Fee. Accordingly, in order to secure consideration thereof, each of the following are also enclosed:

\_\_\_\_ Petition to Withdraw from Issue; and

\_\_\_\_ Check No. \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ constituting the petition fee set forth in 37 C.F.R. § 1.17(i)(1).

C. Fees

The Commissioner is hereby authorized to charge payment of or any deficiency in the following fees associated with this communication, or to credit any overpayment thereof, to Deposit Account No. 23-3178. A duplicate copy of this letter is enclosed.

X Any fee required in relation to filing of this letter or any documents transmitted therewith.

\_\_\_\_ The submission fee set forth in 37 C.F.R. § 1.17(p) in the event that 37 C.F.R. § 1.97(c) applies and the Examiner is not satisfied that any Promptness Certificate submitted meets the requirements of 37 C.F.R. § 1.97(e).

\_\_\_\_ The submission fee set forth in 37 C.F.R. § 1.17(p).

\_\_\_\_ The petition fee set forth in 37 C.F.R. § 1.17(i)(1).

Dated this 26<sup>th</sup> day of February 2004.

Respectfully submitted,



DANA L. TANGREN  
Attorney for Applicant  
Registration No. 37,246  
Customer No. 022913



PATENT APPLICATION  
Docket No: 13447.9.2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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	Daniel E. Gerbec et al.	)
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Serial No.:	10/651,138	) Art Unit
		) 3732
Filed:	August 28, 2003	)
		)
Confirmation No.:	8182	)
		)
For:	METHODS FOR ADJUSTABLE BONE	)
	FUSION IMPLANT	)

INFORMATION DISCLOSURE STATEMENT  
UNDER 37 CFR § 1.97

Commissioner for Patents  
PO Box 1450  
Alexandria, Virginia 22313-1450

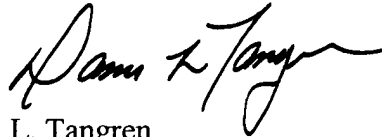
Sir:

Please find, pursuant to 37 CFR § 1.98(a)(1), the enclosed Form PTO-1449 which contains a list of all patents, publications, or other items that have come to the attention of one or more of the individuals designated in 37 CFR § 1.56(c). While no representation is made that these references may be "prior art" within the meaning of that term under 35 USC §§ 102 or 103, the enclosed listed references are disclosed so as to fully comply with the duty of disclosure set forth in 37 CFR § 1.56.

Moreover, while no representation is made that a specific search of office files or patent office records has been conducted or that no better art exists, the undersigned attorney of record believes that the enclosed art is the closest to the claimed invention (taken in its entirety) of which the undersigned is presently aware, and no art which is closer to the claimed invention (taken in its entirety) has been knowingly withheld.

Dated this 26<sup>th</sup> day of February 2004.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dana L. Tangren", written in a cursive style.

Dana L. Tangren  
Attorney for Applicant  
Registration No. 37,246

WORKMAN NYDEGGER  
1000 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, Utah 84111  
Telephone: (801) 533-9800

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Applicant: Daniel E. Gerbec et al.

Confirmation No.: 8182

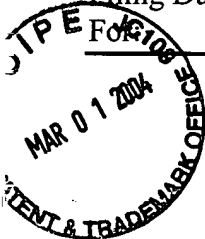
Serial No.: 10/651,138

Att'y Docket No.: 13447.9.2

Filing Date: August 28, 2003

Group: 3732

METHODS FOR ADJUSTABLE BONE FUSION IMPLANT

INFORMATION DISCLOSURE CITATIONS MADE BY APPLICANTU.S. Patent Documents

<u>Examiner Initial*</u>	<u>Document Number</u>	<u>Issue Date</u>	<u>Name</u>
____ 1	4,657,550	04/18/1987	Daher
____ 2	4,834,757	05/30/1989	Brantigan
____ 3	4,863,476	09/05/1989	Shepperd
____ 4	5,059,193	10/22/1991	Kuslich
____ 5	5,171,278	12/15/1992	Pisharodi
____ 6	5,290,312	03/01/1994	Kojimoto et al.
____ 7	5,306,310	04/26/1994	Siebels
____ 8	5,336,223	08/09/1994	Rogers
____ 9	5,390,683	02/21/1995	Pisharodi
____ 10	5,405,391	04/11/1995	Hednerson et al.
____ 11	5,425,772	06/20/1995	Brantigan
____ 12	5,443,514	08/22/1995	Steffee
____ 13	5,458,641	10/17/1995	Ramirez Jimenez
____ 14	5,554,191	09/10/1996	Lahille et al.
____ 15	5,571,192	11/05/1996	Schonhoffer
____ 16	5,653,762	08/05/1997	Pisharodi

Examiner:

Date Considered:

\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609, draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

Applicant: Daniel E. Gerbec et al.

Confirmation No.: 8182

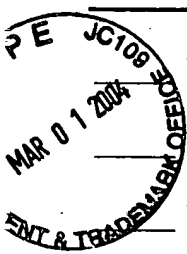
Serial No.: 10/651,138

Att'y Docket No.: 13447.9.2

Filing Date: August 28, 2003

Group: 3732

For: METHODS FOR ADJUSTABLE BONE FUSION IMPLANT



17	5,653,763	08/05/1997	Errico et al.
18	5,658,335	08/19/1997	Allen
19	5,665,122	09/09/1997	Kambin
20	5,693,100	12/02/1997	Pisharodi
21	5,702,455	12/30/1997	Saggar
22	5,716,415	02/10/1998	Steffee
23	5,776,198	07/07/1998	Rabbe et al.
24	5,782,832	07/21/1998	Larsen et al.
25	5,865,848	02/02/1999	Baker
26	5,980,522	11/09/1999	Koros et al.
27	5,989,290	11/23/1999	Biedermann et al.
28	6,015,436	01/18/2000	Schonhoffer
29	6,045,579	04/04/2000	Hochshuler et al.
30	6,080,193	06/27/2000	Hochshuler et al.
31	6,093,207	07/25/2000	Pisharodi
32	6,102,950	08/2000	Vaccaro
33	6,117,174	09/12/2000	Nolan
34	6,126,689	10/03/2000	Brett
35	6,129,763	10/10/2000	Chauvin et al.
36	6,159,244	12/2000	Suddaby

Examiner:

Date Considered:

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Group: 3732

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METHODS FOR ADJUSTABLE BONE FUSION IMPLANT

_____	6,174,334 B1	01/16/2001	Suddaby
_____ 38	6,176,881 B1	01/23/2001	Schar et al.
_____ 39	6,183,517	02/06/2001	Suddaby
_____ 40	6,190,413 B1	02/20/2001	Sutcliffe
_____ 41	6,190,414 B1	02/20/2001	Young et al.
_____ 42	6,193,755 B1	02/27/2001	Metz-Stavenhagen et al.
_____ 43	6,193,756 B1	02/27/2001	Studer et al.
_____ 44	6,193,757 B1	02/27/2001	Foley et al.
_____ 45	6,200,348 B1	03/13/2001	Biedermann et al.
_____ 46	6,296,647	10/2001	Robioneck et al.
_____ 47	6,299,644	10/2001	Vanderschot
_____ 48	6,332,895 B1	12/25/2001	Suddaby
_____ 49	6,395,034	05/2002	Suddaby
_____ 50	6,419,705 B1	07/16/2002	Erickson
_____ 51	2001/0032017 A1	10/18/2001	Alfaro et al.
_____ 52	2002/0010511 A1	01/24/2002	Michaelson

Foreign Patent Documents

<u>Examiner</u> <u>Initial*</u>	<u>Document</u> <u>Number</u>	<u>Publication</u> <u>Date</u>	<u>Country or</u> <u>Patent Office</u>	<u>Translation</u>
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Examiner:

Date Considered:

\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609, draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.

Form PTO-1449

Applicant: Daniel E. Gerbec et al.

Serial No.: 10/651,138

Filing Date: August 28, 2003

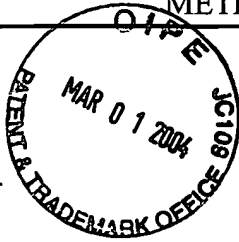
For: METHODS FOR ADJUSTABLE BONE FUSION IMPLANT

Sheet 4 of 4

Confirmation No.: 8182

Att'y Docket No.: 13447.9.2

Group: 3732



Examiner  
Initial\*

Other Documents

(including author, title, pertinent pages, etc.)

**References Cited by Applicants**

While the filing of Information Disclosure Statements is voluntary, the procedure is governed by the guidelines of Section 609 of the Manual of Patent Examining Procedure and 37 C.F.R. §§ 1.97 and 1.98. To be considered a proper Information Disclosure Statement, Form PTO-1449 shall be accompanied by a copy of each listed patent or publication or other item of information and a translation of the pertinent portions of foreign documents (if an existing translation is readily available to the applicant), an explanation of relevance of each reference not in the English language, and should be submitted in a timely manner as set out in MPEP Sec. 609.

Examiners will consider all citations submitted in conformance with 37 C.F.R. § 1.98 and MPEP Sec. 609 and place their initials adjacent the citations in the spaces provided on this form. Examiners will also initial citations not in conformance with the guidelines which may have been considered. A reference may be considered by the Examiner for any reason whether or not the citation is in full conformance with the guidelines. A line will be drawn through a citation if it is not in conformance with the guidelines AND has not been considered. A copy of the submitted form, as reviewed by the Examiner, will be returned to the applicant with the next communication. The original of the form will be entered into the application file.

Each citation initialed by the Examiner will be printed on the issued patent in the same manner as references cited by the Examiner on Form PTO-892.

The reference designations "A1," "A2," etc. (referring to Applicant's reference 1, Applicant's reference 2, etc.) will be used by the Examiner in the same manner as Examiner's reference designations "A," "B," "C," etc. on Office Action Form PTO-1142.

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Examiner:

Date Considered:

\*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609, draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.